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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73013; File No. SR-NYSEARCA-2014-95)

September 5, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to (i) Change the Pricing for the Retail Liquidity Program and the Qualification Requirement for the Existing Retail Order Tier, and to Add a New Retail Order Credit under Basic Rates, and (ii) Eliminate Obsolete Pricing Tiers

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 26, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to (i) change the pricing for the Retail Liquidity Program and the qualification requirement for the existing Retail Order Tier, and to add a new Retail Order credit under Basic Rates, and (ii) eliminate obsolete pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2014. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) change the pricing for the Retail Liquidity Program and the qualification requirement for the existing Retail Order Tier, and to add a new Retail Order credit under Basic Rates, and (ii) eliminate obsolete pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2014.

Retail Liquidity Program

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges ("UTP Securities") while also providing the potential for price improvement to such order flow.<sup>4</sup> Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a "Retail Order," which is defined in Rule 7.44(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no

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<sup>4</sup> See Rule 7.44. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.<sup>5</sup> In addition to RMOs, Retail Liquidity Providers (“RLPs”) were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of “Retail Price Improvement Orders” (“RPIs”), which are non-displayed interest that is better than the best protected bid (“PBB”) or best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, “PBBO”).<sup>6</sup> ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders in Tape B and Tape C securities are not currently charged or provided with a credit (i.e., they are free). The Exchange proposes to instead provide a credit of \$0.0003 per share. RMOs currently receive a credit of \$0.0005 per share for executions of Retail Orders in Tape B and Tape C securities if executed against RPIs and other price-improving interest. The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (i.e., no credit or charge).

#### Retail Order Tier and New Retail Order Basic Rate Credit

The Exchange currently provides a credit of \$0.0033 per share under the Retail Order Tier for Retail Orders that provide liquidity on the Exchange in Tape A, Tape B and Tape C

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<sup>5</sup> RMO is defined in Rule 7.44(a)(2) as an ETP Holder that is approved by the Exchange under Rule 7.44 to submit Retail Orders.

<sup>6</sup> See 17 CFR 242.600(b)(57). RLP is defined in Rule 7.44(a)(1) as an ETP Holder that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 7.44. RPI is defined in Rule 7.44(a)(4) and consists of non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that is priced better than the PBBO by at least \$0.001 and that is identified as such.

securities if the ETP Holder executes an average daily volume (“ADV”) of Retail Orders during the month that is 0.20% or more of U.S. consolidated ADV (“CADV”).<sup>7</sup> The Retail Order Tier credit is available only to Retail Orders that provide liquidity on the Exchange, but an ETP Holder currently may qualify for the Retail Order Tier based on its ADV of Retail Orders that both provide and remove liquidity from the Exchange. The Exchange proposes that only Retail Orders that provide liquidity would count toward qualifying for the Retail Order Tier; Retail Orders that remove liquidity would no longer count. The Exchange also proposes to decrease the CADV threshold for qualification from 0.20% to 0.15%.

Currently, an ETP Holder that submits Retail Orders that provide liquidity, but that does not qualify for the Retail Order Tier or a separate Tiered rate in the Fee Schedule, is subject to the Basic Rate credit of \$0.0020 per share for such executions. The Exchange proposes to add a new Basic Rate credit of \$0.0030 per share for Retail Orders that provide liquidity.

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<sup>7</sup> An ETP Holder is able to designate an order as a Retail Order for purposes of the non-Retail Liquidity Program pricing (i.e., the Retail Order Tier and, as described herein, the proposed Retail Order Basic Rate credit) without designating the order as a Retail Order for purposes of the Retail Liquidity Program pricing. An order designated only for non-Retail Liquidity Program pricing would not be eligible to execute in the Retail Liquidity Program or be subject to Retail Liquidity Program pricing. However, an ETP Holder could choose to designate an order for purposes of both the Retail Liquidity Program and otherwise, in which case the Exchange would consider the order to be a Retail Order for purposes of executions within the Retail Liquidity Program, and apply Retail Liquidity Program pricing for any such executions, and also then as a Retail Order for purposes of the Retail Order Tier and the proposed Retail Order Basic Rate credit for any executions outside of the Retail Liquidity Program. The same requirements of Rule 7.44(a)(3) applies with respect to Retail Orders, whether within or outside of the Retail Liquidity Program. The Exchange described these details in a prior rule change that introduced the Retail Liquidity Program pricing, including that the manner in which an order was designated (i.e., either within or outside of the Retail Liquidity Program, or both) would determine the applicable pricing. See Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (SR-NYSEArca-2014-22).

### Elimination of Obsolete Pricing

The Fee Schedule currently includes several pricing tiers that have not encouraged ETP Holders to increase their activity to qualify for the tiers as significantly as the Exchange anticipated they would. These tiers are as follows: (i) Investor Tiers 1-4, (ii) Retail Order Cross Asset Tier, and (iii) Routable Order Cross Asset Tier. The Exchange proposes to remove these pricing tiers from the Fee Schedule as well as any related cross references.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### Retail Liquidity Program

The Exchange believes that the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately five months ago.<sup>10</sup> At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (SR-NYSEArca-2014-22).

review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of \$0.0003 per share for RLP and Non-RLP executions of RPIs against Retail Orders is reasonable because it would further incentivize submission of RPIs for interaction with Retail Orders and therefore could result in greater price improvement for Retail Orders. The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of the Retail Liquidity Program. The proposed change also is reasonable because, despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs.

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.<sup>11</sup> While the Exchange believes that markets and price

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<sup>11</sup> See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (“Concept Release”) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission’s website) (“White Speech”); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website) (“Schapiro Speech”). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in “dark” venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RLPs and non-RLPs being available for interaction with the Retail Orders. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

### Retail Order Tier and New Retail Order Basic Rate Credit

The Exchange believes that it is reasonable that only Retail Orders that provide liquidity would count toward qualifying for the Retail Order Tier. This would result in the type of volume to which the corresponding credit applies being the same as the volume that counts toward qualification – i.e., only Retail Orders that provide liquidity for both. The Exchange also believes that the proposed change is reasonable because, while Retail Orders that remove liquidity would no longer count toward qualifying for the Retail Order Tier, the qualifying threshold would be decreased from 0.20% to 0.15%. The Exchange believes that the decreased threshold may balance the effect of the more narrow activity that would count toward qualifying. The Exchange believes that the proposed threshold of 0.15% is reasonable because it would remain within a range that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders to the Exchange in order to qualify for the applicable credit of \$0.0033 per share. This would continue to contribute to increasing liquidity available on the Exchange.

The Exchange believes that it is reasonable to add a new Basic Rate credit of \$0.0030 per share for Retail Orders that provide liquidity. The Exchange believes that the proposed new credit would contribute further to balancing the effect of the more narrow activity that would count toward qualifying for the Retail Order Tier, as described above. In this regard, an ETP Holder that does not qualify for the Retail Order Tier would still be eligible for a credit for its Retail Orders that provide liquidity that is higher than the standard \$0.0020 per share Basic Rate credit for providing liquidity, which the Exchange believes may be below the level that would continue to encourage submission of Retail Orders on the Exchange. The proposed new \$0.0030 Basic Rate credit would be set at a level that would reasonably



contribute to encouraging ETP Holders to submit Retail Orders. Retail Orders that provide liquidity would receive the new Basic Rate credit of \$0.0030 per share if the ETP Holder does not qualify for the Retail Order Tier or another Tiered rate in the Fee Schedule.

The proposed new Retail Order Basic Rate credit would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new credit also is reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers. The Exchange also believes that the proposed \$0.0030 credit is reasonable because it would be identical to the credit on New York Stock Exchange LLC for transactions in orders designated as “retail” that provide liquidity. The proposed credit also would be similar to the manner in which The Nasdaq Stock Market, LLC provides a \$0.0033 credit for “Designated Retail Orders” that provide liquidity.<sup>12</sup>

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors’ confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange’s liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed change also is consistent with the Act because all similarly situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders would be eligible to qualify for the rates by satisfying the related thresholds, where applicable.

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<sup>12</sup> See NASDAQ Rule 7018.

Furthermore, the submission of Retail Orders is optional for ETP Holders, in that an ETP Holder could choose whether to submit Retail Orders and, if it does, the extent of its activity in this regard.

#### Elimination of Obsolete Pricing

The Exchange believes that it is reasonable to eliminate the obsolete pricing tiers from the Fee Schedule because ETP Holders have not increased their activity to qualify for these tiers as significantly as the Exchange anticipated they would. The Exchange believes that this is equitable and not unfairly discriminatory because the tiers would be eliminated entirely – no ETP Holders would remain able to qualify for the eliminated tiers. This aspect of the proposed change would therefore result in a more streamlined Fee Schedule, including with respect to removal of related cross references.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition. The removal of obsolete pricing tiers is not competitive in nature, but would result in a more streamlined Fee Schedule.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2014-95 on the subject line.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2014-95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEARCA-2014-95 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).